

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KELLY WRIGHT, JR.,

Defendant-Appellant.

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UNPUBLISHED

July 22, 2010

No. 292717

Wayne Circuit Court

LC No. 08-017934-FC

Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

Defendant Kelly Wright, Jr. appeals as of right his jury conviction of two counts of first-degree premeditated murder,<sup>1</sup> two counts of felony murder,<sup>2</sup> two counts of assault with intent to commit murder,<sup>3</sup> one count of first-degree criminal sexual conduct (CSC I),<sup>4</sup> and one count of possession of a firearm during the commission of a felony (felony firearm).<sup>5</sup> The trial court sentenced Wright, as a fourth-offense habitual offender,<sup>6</sup> to 2 years' imprisonment for felony firearm, followed by concurrent sentences of life imprisonment without parole on alternative theories of first-degree premeditated murder and first-degree felony murder for each of the two victims involved, 25-45 years' imprisonment for each of the assault with intent to commit murder counts, and 25-45 years' imprisonment for the CSC I count. We affirm.

**I. BASIC FACTS**

On the night of October 21, 1987, Wright and several other people were at Comela Leonard's apartment in River Rouge, Michigan. Wright and the other occupants spent the night

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<sup>1</sup> MCL 750.316(1)(a).

<sup>2</sup> MCL 750.316(1)(b).

<sup>3</sup> MCL 750.83.

<sup>4</sup> MCL 750.520b(1)(e).

<sup>5</sup> MCL 750.227b.

<sup>6</sup> MCL 769.12.

smoking cocaine. During the early morning hours of the next day, Wright, Loretta Williams, Anthony Leonard, Comela Leonard, and Vickie Moore, were in the bedroom continuing to smoke cocaine. However, Wright left for a brief time after his brother called him out to the living room. When Wright returned to the bedroom, he brandished a gun, claiming that someone had stolen his brother's cocaine. Wright's brother then entered the bedroom and tried to force Moore to perform fellatio on him. At first, Moore refused, but she eventually complied after Wright pointed the gun at her. Wright then turned and fired his gun at Williams; the bullet struck Williams in the chest, passed through her, and struck Comela Leonard in the head. As Comela Leonard lay on the floor, Wright shot her again in the face. Wright then shot Anthony Leonard three times. Wright also fired at Moore, but the bullet hit the bed. After Wright and his brother left, Comela Leonard and Moore left the apartment and flagged down a nearby police officer. The officer took the women to the hospital, where they were treated and their statements were taken. Wright was eventually arrested and charged. The jury found him guilty on all counts, as stated above. Wright now appeals.

## II. MOTION TO SUPPRESS

### A. STANDARD OF REVIEW

Wright argues that the trial court erred in failing to suppress his confession. We review de novo a trial court's determination that a waiver was knowing, intelligent, and voluntary.<sup>7</sup> We also review de novo a trial court's ultimate decision on a motion to suppress.<sup>8</sup> However, we give deference to a trial court's assessment of the weight of the evidence and the credibility of the witnesses,<sup>9</sup> and we will not reverse the trial court's factual determinations related to the motion to suppress unless they are clearly erroneous.<sup>10</sup> "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made."<sup>11</sup> When reviewing a trial court's determination of voluntariness, we examine the entire record and make an independent determination.<sup>12</sup>

### B. LEGAL STANDARDS

A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); [*People v Daoud*, [462 Mich 621,] 632-639[; 614 NW2d 152 (2000)]. A confession or waiver of constitutional rights must be made

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<sup>7</sup> *People v Tierney*, 266 Mich App 687, 707-708; 703 NW2d 204 (2005).

<sup>8</sup> *People v Bolduc*, 263 Mich App 430, 436; 688 NW2d 316 (2004).

<sup>9</sup> *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

<sup>10</sup> *Bolduc*, 263 Mich App at 436.

<sup>11</sup> *Id.* (quotations and citations omitted).

<sup>12</sup> *People v Shipley*, 256 Mich App 367, 372; 662 NW2d 856 (2003).

without intimidation, coercion, or deception, *id.* at 633, and must be the product of an essentially free and unconstrained choice by its maker. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988). The burden is on the prosecution to prove voluntariness by a preponderance of the evidence. *Daoud, supra* at 634. In *Cipriano, supra* at 334, our Supreme Court set forth a nonexhaustive list of factors that should be considered in determining the voluntariness of a statement:

The age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

No single factor is necessarily conclusive on the issue of voluntariness, and “the ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made.” *Id.*<sup>[13]</sup>

### C. *WALKER*<sup>14</sup> HEARING

Before trial, the court conducted a *Walker* hearing to consider Wright’s motion to suppress his confession. During the hearing, the trial court took testimony from River Rouge Detective Inspector Jeffrey Harris and from Wright.

Inspector Harris testified that at approximately 9:00 p.m. on November 14, 2008, he was called to the police department because Wright, a suspect on Michigan’s Most Wanted list, had been apprehended. Inspector Harris explained that Wright did not arrive at the River Rouge police department until approximately three to four hours after he got the call because Wright was treated at the Detroit Receiving Hospital following his arrest. During his testimony, Wright explained that at the time of his arrest he was experiencing swelling and pain from a fractured ankle, so the arresting officers took him to the hospital for treatment.

During his testimony, Inspector Harris explained that upon booking at the River Rouge police department at approximately 12:30 a.m. the next morning, the booking processing officer

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<sup>13</sup> *People v Akins*, 259 Mich App 545, 564-565; 675 NW2d 863 (2003).

<sup>14</sup> *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2 87 (1965) (establishing that when a defendant challenges the admissibility of his confession, the trial court must hear testimony regarding the circumstances of the confession outside the presence of the jury).

read Wright a health-screening questionnaire. Inspector Harris witnessed the booking procedure. The 26-question form indicated that Wright was conscious, was not in present need of emergency medical services for injury or illness, was not exhibiting signs of infection and was free of vermin, did not appear to be under the influence of alcohol or drugs, did not appear to be experiencing alcohol or drug withdrawal symptoms, did not appear to be a risk to himself or others, was not presently taking medications and was not in need of medication, did not have a special diet, did not have any medication allergies, and was not suffering from any diseases or ailments. In response to the question, "Have you recently been hospitalized or recently seen a medical or psychiatric doctor for any illness?," the form indicated, "Yes." and explained, "Checked by Receiving Hospital 11-14-08."

Inspector Harris testified that at approximately 1:00 a.m. he then advised Wright of his Fifth Amendment rights by reading directly from an advice of rights form. Wright agreed to speak to Inspector Harris, who then started his questioning. Inspector Harris denied that he threatened, coerced, or attempted to influence Wright's decision to talk. Inspector Harris also testified that Wright never asked for the questioning to stop and never asked for an attorney. The interview lasted approximately three to three and one half hours, with only a couple "very brief breaks" for Inspector Harris to use the men's room and to get food or drinks. Wright did not leave the interrogation room at any point; however, Inspector Harris testified that Wright never asked to leave the room for any reason.

Inspector Harris stated that Wright "had some concern" about his foot, but Inspector Harris was told that Wright had been treated and released, or "medically cleared," at the hospital for that injury. In response to Wright's complaints, Inspector Harris brought in a chair so that Wright could elevate his foot, as the doctors had instructed him. Inspector Harris also recalled Wright asking for aspirin or Tylenol, but he could not recall whether he actually provided either of those medications to Wright. Inspector Harris testified that, based on his 17 years of experience as a police officer, Wright did not appear to be under the influence of alcohol, any illegal substances, or any prescription medication. Inspector Harris denied that Wright acted in any way that would have suggested that he was not acting voluntarily in choosing to speak. According to Inspector Harris, his questioning of Wright revealed that Wright had graduated from high school and was able to read and write. Inspector Harris testified that Wright was given food and drink during the interview.

On cross-examination, Inspector Harris stated that he was not made aware, either by Wright or any medical personnel, whether Wright had been administered any medication while he was the hospital. Inspector Harris also stated that no one ever informed him whether Wright had any prescription medications in his possession when he was arrested; notably, however, he claimed that he normally would have been told if that type of substance had been discovered. Regarding his observations of Wright's behavior, Inspector Harris admitted that Wright was "walking with some problems because he had a foot injury . . . that was ruled out," but he clarified that "the rest of his body control and movements were, in my opinion, not to be under the influence of anything." Inspector Harris also testified that, based on his questioning, it was his belief that Wright was "quite aware" of why he was in custody and understood what was "going on."

Wright testified that he was given "some kind of pain pill" while he was at the hospital. He also claimed that, about an hour after he arrived at the hospital, he took two Vicodin pills that

he had in his pocket. Wright admitted that he did not “have a prescription per se” for the Vicodin, but he had them in his possession to treat the pain in his foot. Wright claimed that a Detroit police officer was with him at the time that he took the Vicodin. With regard to the treatment of his foot, Wright testified that the hospital looked at it and simply told him to “elevate it and stay off of it as much as possible.”

Wright claimed that he could not recall being asked any questions during the booking procedure, and he specifically denied that he was asked whether he was under the influence of any medications. Wright admitted that he was advised of and understood his Fifth Amendment rights. Contrary to Inspector Harris’ testimony, Wright estimated that the interrogation lasted four, probably “closer to five” hours. Wright confirmed that he told Inspector Harris that his foot was hurting, but he admitted that he never asked for the questioning to stop nor asked to leave the room. When asked whether the Vicodin had “any effect on [his] ability to hear, see, perceive or understand what was taking place[.]” Wright responded, “It’s hard to tell because they make you hallucinate.” And he claimed that he was hallucinating during “some of” the interrogation. However, Wright also admitted that he never informed Inspector Harris about his hallucinations. He further admitted that he had no difficulty answering the questions posed to him.

On cross-examination, Wright confirmed that he never requested any further medical treatment. When asked to explain what he meant when he claimed to have hallucinations, he stated that “everything spins.” But he admitted that the experience “didn’t make [him] uncomfortable.”

After reviewing the testimony and a video recording of the interrogation, the trial court issued its ruling. The trial court first acknowledged that Wright’s argument was that his confession was involuntary because he was under the influence of medication related to his foot injury. The trial court noted, however, that the Vicodin that Wright claimed to have taken was self-administered. And, according to the trial court, its review of Wright’s medical records indicated that the pill the hospital had given him was merely aspirin. The trial court added that there was no dispute that Wright was read and understood his Fifth Amendment rights. The trial court noted that Wright was “in a certain amount of discomfort,” but the court also noted that “it did not appear, in any way, to affect his mind, his ability to answer questions.” The trial court explained that Wright “[s]poke freely with the interrogator about various things dealing with the subject matter as well as things that were collateral to that matter.” The trial court concluded that Wright’s “confession was, in fact, voluntary”:

There is no evidence at all, no indication in any of the four and half plus hours of confession that Mr. Wright had any, that any of his ability to recollect facts were compromised, none whatsoever.

The Court finds that Mr. Wright was very lucid during the period of time that the interrogation or subsequent, you know, confession was provided.

Accordingly, the trial court denied Wright’s motion to suppress his confession.

#### D. APPLYING THE STANDARDS

Wright argues that his confession was involuntary because, “even though outwardly [the] effects [of the pills] were not evident to the officer,” the pills that he took at the hospital caused him “to hallucinate at times during the extensive interview.” Wright adds that he was “injured, in ill health, and . . . had not slept for at least 18 hours.” However, based on our de novo review of the record,<sup>15</sup> we conclude that Wright’s confession was voluntary.

At the time of his arrest, Wright was 58 years old. He is a high school graduate, and he can read and write. Prior to the arrest at issue, Wright had previously been convicted of numerous crimes. Upon arriving at the River Rouge police department, Wright was immediately booked and questioned. He was advised of his constitutional rights, which he understood. He agreed to speak to Inspector Harris and never requested an attorney. Wright claimed that the interrogation lasted almost five hours; Inspector Harris testified that the interrogation lasted only three and one half hours. The trial court stated that the interrogation lasted “four and half plus hours.” We find no clear error in the trial court’s determination.<sup>16</sup>

And we find nothing improper about the length of the interview: at no time did Wright ask to leave to use the facilities or express that he was suffering from fatigue. He was provided with food and drink. Although he was suffering from some discomfort from his foot injury, Inspector Harris complied with Wright’s request that he be allowed to elevate his foot, and, Wright never asked for the questioning to stop due to this discomfort.

Wright also claims that during the questioning he was under the influence of Vicodin, which caused him to hallucinate. However, he also admitted that he never told Inspector Harris about the hallucinations and that they did not “make [him] uncomfortable.” Inspector Harris testified that there was no indication in his observations of Wright that he was under the influence of any substance or that he was not aware of what was happening. Indeed, Wright admitted that he had no difficulty answering the questions posed to him. Wright does not claim that he was abused or threatened with any abuse.

Our review of the record demonstrates that Wright’s confession was made without intimidation, coercion, or deception, and was the product of his essentially free and unconstrained choice to speak.<sup>17</sup> The totality of the circumstances surrounding the making of Wright’s confession indicates that it was freely and voluntarily made.<sup>18</sup>

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<sup>15</sup> *Tierney*, 266 Mich App at 707-708; *Bolduc*, 263 Mich App at 436; *Shipley*, 256 Mich App at 372.

<sup>16</sup> See *Bolduc*, 263 Mich App at 436.

<sup>17</sup> See *People v Daoud*, 462 Mich 621, 633; 614 NW2d 152 (2000); *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988); *Akins*, 259 Mich App at 564-565.

<sup>18</sup> See *Cipriano*, 431 Mich at 334; *Akins*, 259 Mich App at 564-565.

Accordingly, we conclude that that the prosecution met its burden to prove voluntariness by a preponderance of the evidence.<sup>19</sup> Therefore, the trial court correctly ruled that Wright's statement obtained during his custodial interrogation was admissible because he voluntarily, knowingly, and intelligently waived his Fifth Amendment rights.<sup>20</sup>

### III. DOUBLE JEOPARDY

#### A. STANDARD OF REVIEW

Wright argues that his two convictions and sentences for first-degree murder and felony murder for the death of Loretta Williams and the two convictions and sentences for first-degree murder and felony murder for the death of Anthony Leonard violated the constitutional prohibition against multiple punishments for the same offense.

Wright did not raise this claim of error in the proceedings below. However, a double jeopardy issue presents a significant constitutional question that we will consider regardless whether the defendant raised it before the trial court.<sup>21</sup> But to avoid forfeiture, the defendant must show that plain error occurred that affected substantial rights, and reversal is warranted only if the error resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence.<sup>22</sup>

#### B. LEGAL STANDARDS

The United States and Michigan Constitutions prohibit placing a defendant twice in jeopardy for a single offense.<sup>23</sup> They protect a defendant against both successive prosecutions for the same offense and multiple punishments for the same offense.<sup>24</sup> The purpose of the double jeopardy protection against multiple punishments for the same offense is to protect the defendant's interest in not enduring more punishment than was intended by the Legislature.<sup>25</sup>

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<sup>19</sup> See *Daoud*, 462 Mich at 634; *Akins*, 259 Mich App at 564-565.

<sup>20</sup> See *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *Daoud*, 462 Mich at 632-639; *Akins*, 259 Mich App at 564-565.

<sup>21</sup> *People v McGee*, 280 Mich App 680, 682; 761 NW2d 743 (2008).

<sup>22</sup> *Id.*

<sup>23</sup> US Const, Am V; Const 1963, art 1, § 15; *People v Ream*, 481 Mich 223, 227; 750 NW2d 536 (2008).

<sup>24</sup> *Ream*, 481 Mich at 227.

<sup>25</sup> *People v Calloway*, 469 Mich 448, 451; 671 NW2d 733 (2003); *People v Grazhidani*, 277 Mich App 592, 598; 746 NW2d 622 (2008).

Convicting a defendant of both first-degree premeditated murder and first-degree felony murder arising out of the death of a single victim is a violation of double jeopardy protection.<sup>26</sup> However, this Court will uphold a single conviction for murder based on two alternative theories.<sup>27</sup> Therefore, the proper remedy when convicting a defendant of both first-degree premeditated murder and first-degree felony murder arising out of the death of a single victim, is to modify the conviction to specify that it is a single count of first-degree murder supported by two theories.<sup>28</sup>

### C. APPLYING THE STANDARDS

At Wright's sentencing hearing, the trial court initially stated as follows:

[C]ount one, murder in the first degree premeditation and this specifically addresses the death of Loretta Williams, the Court sentences the defendant to life in prison without parole.

Count two, homicide felony murder of Loretta Williams the Court sentences the defendant to prison life without parole.

Count three, homicide murder in the first degree, murder of one Anthony Leonard, the Court sentences the defendant to life in prison without parole.

Count four, homicide felony murder again with murder of Anthony Leonard, the Court sentences the defendant to life in prison. Life without parole.

However, after a brief recess, the prosecutor pointed out that the sentencing should reflect that Wright was being sentenced "for each death to natural life under two theories." The prosecutor explained,

So the commitment order reads he gets on counts one and two one sentence of natural life supported by premeditation theory and felony murder theory.

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So there won't be four natural lives [sic] on there even though that's what the record reflects. The commitment will read as to three and four one natural life under both theories.

The trial court then agreed to draft the judgment of sentence accordingly.

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<sup>26</sup> *People v Williams*, 265 Mich App 68, 72; 692 NW2d 722 (2005), aff'd 475 Mich 101 (2006); *People v Bigelow*, 229 Mich App 218, 220-221; 581 NW2d 744 (1998).

<sup>27</sup> *Williams*, 265 Mich App at 72; *Bigelow*, 229 Mich App at 220-221.

<sup>28</sup> *Williams*, 265 Mich App at 72; *Bigelow*, 229 Mich App at 220-221.



Our review of the judgment of sentence/commitment order reveals that it does clearly reflect one conviction and sentence supported by the two theories of premeditated murder and felony murder for both victims. Therefore, Wright's request for a remand to correct the judgment of sentence is without merit.

We affirm.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ William C. Whitbeck